

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

**JAMES EDWARD MITCHELL v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Davidson County**  
**No. 200-C-1549     Seth W. Norman, Judge**

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**No. M2005-00962-CCA-R3-PC - Filed August 23, 2005**

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The Defendant, James Edward Mitchell, appeals from the order of the trial court dismissing his petition for post-conviction relief as time-barred. The State has filed a motion requesting that this Court affirm the judgment of the trial court pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. We grant the State's motion and affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed pursuant to Rule 20, Rules of the Tennessee Court of Criminal Appeals**

DAVID H. WELLES, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

James Edward Mitchell, Nashville, Tennessee, Pro Se.

Paul G. Summers, Attorney General & Reporter; Benjamin A. Ball, Assistant Attorney General; Victor S. Johnson, District Attorney General; and Dan Hamm, Assistant District Attorney General, for the appellee, State of Tennessee.

**MEMORANDUM OPINION**

The record reflects that on September 7, 2001, the Defendant pleaded guilty to and was convicted of one count of second degree murder. He was sentenced to a term of nineteen years. No appeal was taken.

On January 25, 2005, the Defendant filed a "constitutional challenge to vacate invalid sentence." In this petition, the Defendant primarily challenged his sentence under the authority of Blakely v. Washington, \_\_\_ U.S. \_\_\_, 124 S.Ct. 2531 (2004). On March 3, 2005, the trial court entered an order denying relief.

Also on March 3, 2005, the Defendant filed a petition for post-conviction relief. This petition alleged primarily that his trial counsel had allowed his due process rights to be violated, that his guilty plea was unknowing and involuntary, and that he was denied the effective assistance of counsel. On March 11, 2005, the trial court dismissed this petition as time-barred. It is from this Order that the Defendant appeals.

A person in custody under a sentence of a court of this state must petition for post-conviction relief within one year of the date of the final action of the highest State Appellate Court to which an appeal is taken, or if no appeal is taken, within one year from the date on which the judgment becomes final. See Tenn. Code Ann. § 40-30-102(a). It is apparent from the record in this case that the petition was not filed within the time allowed by the statute of limitations.

Although the Defendant alleges that the statute of limitations should be tolled, an examination of the petition and the arguments presented on appeal reveal no facts or grounds under which due process would require that the statute of limitations not be strictly applied as to the petition nor any reasons supporting any other exception to the application of the statute of limitations.

We conclude that the trial court did not err in summarily dismissing the petition for post-conviction relief as time-barred. Accordingly, the State's motion is granted and the judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

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DAVID H. WELLES, JUDGE